the contemplation of the parties, *Street* v. *Central Brewing Co.* (1905) 101 App. Div. 3, 91 N. Y. Supp. 547, nor of alterations required by a change of municipal policy effected subsequent to the making of the lease; *Herald Square Realty Co.* v. *Saks & Co.* (1915) 215 N. Y. 427, 109 N. E. 545; and the courts will infer the intention of the parties from a consideration of all the clauses in the lease. *City of N. Y.* v. *U. S. Trust Co.* (1906) 116 App. Div. 349, 101 N. Y. Supp. 574; *Epstein* v. *Saviano* (1906) 51 Misc. 28, 99 N. Y. Supp. 910. In view of this policy, the instant cases are probably correctly decided, although it is noteworthy that in the first case the court said that the issue was whether the landlord was bound to make the "structural changes" ordered, and in the second held that the erection of fire escapes did not constitute "structural changes" as the term had been applied in "some of the cases". The court, however, distinguished the cases on the ground that to "conform" implied mere passivity, while to "comply" at his own cost imposed on the tenant the active duty of doing the work ordered by the city. Not all courts have taken such a benign attitude towards the tenant as has been usual in those of New York. *Cf. McKinley* v. *C. Jutte & Co.* (1911) 230 Pa. St. 122, 79 Atl. 244; *Poleck* v. *Pioche* (1868) 35 Cal. 416.

OFFICERS—WRONGFUL REMOVAL—LIABILITY FOR DAMAGES.—The plaintiff was discharged from his position in the civil service for political reasons and without a hearing, contrary to the provisions of the Civil Service Law. He was reinstated pursuant to a writ of peremptory mandamus and now sues the officer who removed him for damages. *Held,* the plaintiff may recover the compensation attached to his position from the time of his removal until he was reinstated. *McGraw* v. *Gresser* (N. Y. 1919) 123 N. E. 84.

That the right to hold public office and enjoy its benefits should not be a mere empty privilege was recognized early in the English law. The writs of *quo warranto* and *mandamus* were given to secure it. 2 Bl. Comm. *263. The New York statute simply re-expresses one phase of this well-established principle in prohibiting the removal of certain incumbents from civil service positions without a hearing, with the writ of *mandamus* as remedy. N. Y. Consol. Laws c. 7 (Laws of 1909 c. 15) §22. Not only has the right been recognized, but it has been appreciated that the writ simply operated to reinstate and was not a complete remedy, and hence an action for damages was permitted. In early law an action for money had and received was allowed against one who wrongfully held another's office. *Green* v. *Hewett* (1793) Peake's N. P. 182; see *Boyter* v. *Dodsworth* (1796) 6 Term Rep. 681. In New York a veteran removed from civil service without a hearing may recover his lost compensation from the employing village, township, or city. N. Y. Consol. Laws c. 7 (Laws of 1909 c. 15) §23; *cf. Bryant* v. *Town of Randolph* (1892) 133 N. Y. 70, 30 N. E. 657. There seems to be no reason why the one who committed the wrong should be ex-

empt from civil liability by virtue of his office. This principle was clearly enunciated by Holt, C. J., in *Lane* v. *Cotton* (1701) 1 Salk. 17, and established in the English law in *Ashby* v. *White* (1703) 2 Ld. Raym. 938; and has been followed in the United States. *Beardslee* v. *Dodge* (1894) 143 N. Y. 160, 38 N. E. 205; *Tracy & Balestier* v. *Swartwout* (1836) 35 U. S. 80; *Kelly* v. *Bemis* (1855) 70 Mass. 83. The common-law privilege of judicial officers, *Randall* v. *Brigham* (1868) 74 U. S. 523, does not apply where, as in the principal case, the act was ministerial, and purity of motive is immaterial. *Houghton* v. *Swarthout* (N. Y. 1845) 1 Den. 589; *Amy* v. *The Supervisors* (1870) 78 U. S. 136; but see *People ex rel. Walker* v. *Ahearn* (1910) 139 App. Div. 88, 94, 12 N. Y. Supp. 845, *aff'd People ex rel. Walker* v. *McAneny* (1911) 202 N. Y. 551, 95 N. E. 1137.

USURY—MORTGAGES—TIME FOR SETTING UP DEFENSE.—Under a statute causing a forfeiture of all interest in an usurious transaction, a mortgagor, on the theory that the interest previously paid should be applied toward the discharge of the principal indebtedness, sought either to have the mortgage and foreclosure deed cancelled, or to redeem in case not fully paid, where the mortgagee himself had bought in the property at a regular foreclosure sale. *Held,* two judges dissenting, that he could do neither. *Jones* v. *Meriwether* (Ala. 1919) 82 So. 185.

Usury statutes, broadly, are of two kinds, (1) those making the entire transaction void, Gen. Bus. Law §373, N. Y. Consol. Laws c. 20 (Laws of 1909 c. 25) §373, and (2) those entailing a forfeiture of interest, either all, Alabama, Code 1907 §4623, or the illegal portion, Ky. Stat. (Carroll 1915) §2219. Under the former kind of statute, where a loan has been made at an usurious rate and a mortgage given, foreclosure will be enjoined without a tender of the amount due. *Kaufman* v. *Schwartz* (1916) 174 App. Div. 239, 160 N. Y. Supp. 1056 (chattel mortgage). Under the latter sort the sale will not be enjoined unless there is a tender of the principal plus legal interest, although all interest is declared forfeited, *Lindsay* v. *U. S. Savings & Loan Co.* (1899) 127 Ala. 366, 28 So. 171, except where there is a clear statutory provision to the contrary. *Barclift* v. *Fields* (1906) 145 Ala. 264, 41 So. 84. But in any case, the restraint will be only *"pro tanto,"* see *Powell* v. *Hopkins* (1872) 38 Md. 1, 13. At foreclosure, though, the amount of excess paid may be applied as a set off; *Harbison* v. *Houghton* (1866) 41 Ill. 522, 627; *Pond* v. *Causdell* (1872) 23 N. J. Eq. 181; *Ward* v. *Sharp* (1843) 15 Vt. 115; or usury may be pleaded as a defense, *Holm* v. *First National Bank* (1901) 15 S. D. 75, 87 N. W. 526. After foreclosure, a distinction is drawn in those jurisdictions wherein usury voids the transaction and those in which interest is forfeited. In the former, the mortgage, mortgage sale, and notes may be avoided, *Scott* v. *Austin* (1887) 36 Minn. 460, 32 N. W. 89 and 864, except where the property has been sold to an innocent purchaser for value,